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# In the Supreme Court of the United States

OCTOBER TERM, 1936

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No. 532

UNITED STATES OF AMERICA, PETITIONER

*v.*

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

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*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT*

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## BRIEF FOR THE UNITED STATES

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### OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 17–18) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 22–25) is reported in 85 F. (2d) 542.

### JURISDICTION

The judgment of the Circuit Court of Appeals for the Second Circuit was entered August 17, 1936

(R. 25). The petition for a writ of certiorari was filed on November 17, 1936, and was granted on December 21, 1936 (R. 26). The jurisdiction of this Court rests upon the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED

By duly enacted decrees the Soviet Government dissolved a Russian corporation and appropriated its assets, including the right to receive the amount of a deposit with a bank in New York. Thereafter the Soviet Government, by an international agreement for the settlement of international claims, assigned all its rights against American nationals to the United States Government.

The questions are:

1. Was the right to receive this bank deposit subject to the operation of the Soviet decrees which transferred the right to the Soviet Government?

2. Is there any controlling public policy which prevents the enforcement of that right, in a Federal court, by the United States as assignee of the Soviet Government?

## EXECUTIVE AGREEMENT AND STATUTE INVOLVED

Agreement between the President of the United States and the People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, concluded November 16, 1933 (R. 12–14), Appendix, *infra*, pp. 53–56; Section 977-b, New York Civil Practice Act, Appendix, *infra*, pp. 56–65.

STATEMENT

The Kompania Petrogradskago Metallicheskago Zavoda (Petrograd Metal Works) was prior to 1918 a corporation organized and existing under the laws of Russia where it conducted a metallurgical and metal manufacturing business (R. 3). It had a deposit with August Belmont & Co., under which firm name August Belmont carried on a private banking business in New York until his death in 1924 (R. 3). Thereafter the Surrogate's Court of Nassau County, New York, issued letters testamentary to the respondents, Morgan Belmont and Eleanor R. Belmont (R. 4).

In 1918 the Soviet Government decreed the dissolution, termination, and liquidation of certain Russian corporations, including the Petrograd Metal Works, and nationalized and appropriated the assets thereof (R. 3, 6).

On November 16, 1933, an executive agreement was concluded by an exchange of diplomatic correspondence between the President of the United States and M. Litvinov, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics (R. 12–14). By this agreement the Government of the Union of Soviet Socialist Republics released and assigned to the United States Government all amounts due or that might be found to be due the Soviet Government as successor of prior governments of Russia, or otherwise, from American nationals, including the deposit with the Belmont firm (R. 5). The assign-

ment stated that it was made "preparatory to a final settlement of the claims and counter-claims" between the two governments and their nationals (R. 12).

On June 18, 1935, the United States demanded from the respondents the payment of $25,438.48, the amount standing to the credit of the Metal Company with the former Belmont firm, and the respondents have failed to comply with this demand (R. 5). Suit was then instituted by the United States in the United States District Court for the Southern District of New York, for the recovery of the amount of this deposit. Defendants moved to dismiss the complaint for failure to state a cause of action (R. 16). The motion was granted and the United States appealed. The United States Circuit Court of Appeals for the Second Circuit affirmed the judgment of the District Court, one judge dissenting.[1]

## SPECIFICATION OF ERRORS TO BE URGED

The petitioner urges that the Circuit Court of Appeals for the Second Circuit erred:

1. In holding that the nationalization decree of the Soviet Government did not have the effect of transferring to that Government title to the in-

[1] On June 8, 1936, while the appeal was pending in the Circuit Court of Appeals, the Legislature of the State of New York enacted section 977b of the Civil Practice Act, which is printed in the Appendix, *infra*, pp. 56–65, and is discussed at pp. 42–48, *infra*.

tangible personal property of the former Petrograd Metal Works in the United States.

2. In holding that diplomatic recognition of the Government of the Union of Soviet Socialist Republics by the Government of the United States did not require the courts of the United States to give full force and effect to the said decree of the Soviet Government as to personal property wherever located.

3. In holding that by the decree of nationalization the Soviet Government did not become the statutory successor of the former Petrograd Metal Works and entitled to immediate possession of all of its assets, including the bank deposit.

4. In holding that enforcement of the decree of the Soviet Government dissolving the former Petrograd Metal Works and nationalizing and appropriating all of its properties, including the said bank deposit, is controlled by the public policy of the State of New York.

5. In failing to hold that the bank deposit in question had a *situs* in Russia for the purposes of this case.

6. In affirming the judgment of the District Court.

## SUMMARY OF ARGUMENT

The right to receive the amount of the bank deposit was governed by Russian law. Under that law the Soviet Government validly acquired

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that right, and it should therefore be enforced in our courts.

This is an action at law and therefore only issues between the parties hereto can be considered. *Petrogradsky Bank* v. *National City Bank*, 253 N. Y. 23.

## I

### THE ACQUISITION OF THE RIGHT

A. A bank deposit creates a debtor-creditor relationship resulting in an *obligation to pay* on the part of the bank and a *right to receive* the amount of the deposit on the part of the creditor. *Chicago, Rock Island & P. Railway* v. *Sturm*, 174 U. S. 710, 714. The *obligation to pay* is situated at the place of business of the bank, in this case, New York, but the *right to receive* is situated at the place where the creditor is located. Here the creditor was a corporation created under Russian law and having its principal place of business in Russia. Consequently the right to receive was situated in Russia, and the ownership and transfer of that right were subject to Russian law. When, by Russian law, the right of the Metal Company was divested and was transferred to the Soviet Government, the latter acquired a valid right, which should be enforced in our courts.

B. The transfer of the right to receive the amount of the deposit, from the Metal Company to the Soviet Government, was in effect an assignment of a *chose in action*. When the domicile

of the assignor and the assignee and the place of assignment are the same, the law of that place governs the validity and effect of the assignment. This principle is applicable to the assignment of a bank deposit. *Republica de Guatemala* v. *Nunez* (1927), 1 K. B. 669.

C. The court below proceeded on the theory that a bank deposit has a *situs* only at the place where it is payable. But the *situs* of an intangible is not necessarily localized at one place for all purposes. *Severnoe Securities Corp.* v. *London and Lancashire Ins. Co.*, 255 N. Y. 120, 123. If the concept of *situs* is to be applied to a bank deposit, then for the purpose of determining succession or transfer of ownership, the *situs* is at the domicile of the creditor. Under the rule *mobilia sequuntur personam*, the succession to personal property depends upon the law of the domicile of the decedents. *Ennis* v. *Smith*, 14 How. 399; In re *Lyon's Estate*, 175 Wash. 115, 26 P. (2d) 615. The same rule applies in the case of the dissolution of a corporation. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 259. Consequently the transfer of the right to receive this deposit was controlled by Russian law.

D. The State which creates a corporation has the power to dissolve it. *Pendleton* v. *Russell*, 144 U. S. 640; *Canada Southern Ry.* v. *Gebhard*, 109 U. S. 527. On the dissolution of a corporation, the successor designated by the State of its incorpora-

tion obtains title to the corporation's assets wherever situated. *Relfe* v. *Rundle*, 103 U. S. 222. The Soviet Government had power to and did dissolve the Metal Company and constitute itself as the successor of the company. It thereby acquired the right to this bank deposit.

## II

### THE ENFORCEMENT OF THE RIGHT

A. This Court has held that it will give effect to the decrees of foreign governments with respect to property situated in their territories, irrespective of whether such decrees are confiscatory. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297.

Special reasons call for the application of that rule here. The assignment was procured for the benefit of the United States Government and United States citizens having claims against the Soviet Government. The public policy of the United States favors the settlement of the international claims of its citizens. Consequently, the public policy of the United States accords with the enforcement of the right acquired under this assignment. By accepting the assignment, the Executive has declared in favor of the enforceability of the right, a declaration which he was entitled to make as the sole organ of the Government in the field of foreign relations.

The Fifth Amendment is not applicable. There is no taking from the Belmont firm, which is under

an obligation to repay the amount of the deposit. The taking from the Metal Company was by its sovereign, the Soviet Government, and not by the United States.

B. The New York courts have expressly held that the Russian nationalization decrees transferring the ownership of tangible or intangible property situated in Russia will be enforced. *Salimoff* v. *Standard Oil Co.*, 262 N. Y. 220; *Dougherty* v. *Equitable Life Assurance Soc.*, 266 N. Y. 71. Since the right to receive the amount of the bank deposit was legally situated in Russia, this rule applies to the right of petitioner. *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, relied on by the court below as constituting a refusal to recognize the Soviet Government's title, does not support such a view.

C. Section 977b of the New York Civil Practice Act, recently enacted, has no application to the issues before this Court.

The provision denying validity or effectiveness to nationalization decrees is to be construed as coming into operation only where a receiver brings suit or has been substituted for the corporation in a pending action. It is not applicable here, where neither the receiver nor the corporation is a party.

If the statute is to be considered as merely a reiteration of the rule of public policy laid down in

the decisions of the New York Court of Appeals, the statute does not prevent the enforcement of a right validly acquired under foreign law. *Salimoff* v. *Standard Oil Co., supra; Dougherty* v. *Equitable Life Assurance Soc., supra.*

If the statute be considered as extending the rule laid down in the decisions of the New York Court of Appeals, it would have the effect of divesting the United States of a right which had been acquired prior to the enactment of the statute. *Coombes* v. *Getz*, 285 U. S. 434.

The view of the court below, that the statute provides that the title of the Russian Government is not to be recognized until after the expiration of the period within which other claims against the Metal Company may be asserted, does not require the dismissal of this complaint. This record presents only the question as to whether the complaint states a valid cause of action against these defendants. If this Court reverses the judgment of the court below, respondents could set up the statute in their answer, and if the statute were held valid and applicable, the enforcement of the claim of petitioner might then be postponed pending the assertion of adverse claims.

D. If it be conceded for purposes of argument that the public policy of New York denies the aid of its courts in the enforcement of this right, the Federal courts are not bound to follow this local rule. Validly acquired rights will be enforced in

the Federal courts even though not enforceable in the State courts. *David Lupton's Sons Co.* v. *Automobile Club of America*, 225 U. S. 489; *Boyce* v. *Tabb*, 18 Wall. 546.

* * * * *

The above principles are peculiarly applicable in this case. The Litvinov assignment constitutes a step in the settlement of international claims, a matter of international relations in which the States have no power. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided Dec. 21, 1936. To hold the enforcement of petitioner's right subject to the local policies of the various States would defeat our National Government in its attempt to arrive at a solution of these international questions.

## ARGUMENT

### INTRODUCTION

The court below has pointed out (R. 23) that in accordance with the rule that allegations of fact are admitted by demurrer, the petitioner's allegation that the deposit was appropriated by the decree of June 28, 1918 (R. 6–12) must be accepted as true. No question, therefore, as to legislative intent is in issue herein.

The court below further held (R. 23) that the Litvinov assignment must be construed to include not only obligations of American nationals owed directly to the Soviet Government, as successor to prior governments, but also any claims acquired under its decrees of nationalization. The question as to the scope of the assignment is therefore not discussed herein.

The court below stated that "the question then becomes whether the Metal Works' credit with August Belmont, the defendants' testator, was property within Russia or within New York." On this question it ruled that the debt was property outside Russian territory, for the purpose of determining the title thereto. In so holding, the court viewed the debt as governed by a single law, namely, the law of the domicile of the debtor, for the determination of all rights and legal relationships appertaining thereto.

Holding that the debt was property located in New York, the court then ruled that it was governed by New York law, and that New York public policy is opposed to enforcement of the decree of June 28, 1918, in so far as it relates to this bank deposit.

* * * * *

This is an action at law, between the bank and the United States which claims as assignee of the Soviet Government. In such an action the only issues which may be considered are those between the parties. The claims of any third parties must be excluded from consideration unless and until they become parties to the action. As the New York Court of Appeals said in *Petrogradsky Bank* v. *National City Bank*, 253 N. Y. 23, 38–39:

> The possibility of adverse claims does not relieve the defendant from liability when sued in an action at law by a depositor who is successful in proving a title to the fund.
>
> The defendant cites our decision in *Russian Reinsurance Co.* v. *Stoddard* (240 N. Y. 149, April, 1925), as supporting its defense. The ruling is inapplicable to the situation now before us. There the subject of the controversy was a fund deposited in a bank to be held as trustee for a Russian insurance company, its stockholders and creditors. The company made demand that the *res* be returned by the trustee upon the ground that the purposes of the deposit had failed and that the trust was at an end. The bank

set up in defense the existence of an adverse claim of title by the Soviet Republic, and the danger that this claim might be upheld in France and in other countries where the Soviet decrees were recognized as law. We held that in a suit in equity, there is discretion, if not duty, to refuse a decree whereby a trustee will be directed to make payment of the subject of the trust to one of two claimants unless there is power also by force of the same decree to protect against the rival (*Mahr* v. *Norwich Union Fire Ins. Co.*, 127 N. Y. 452). The rule is different altogether in actions at law (*Chapman* v. *Forbes*, 123 N. Y. 532; *Bauer* v. *Dewey*, 166 N. Y. 402). Here in the case before us the subject of the controversy is not property burdened with a trust to be administered in equity. The subject is an ordinary deposit in a bank to be sued for, if at all, in an action founded on the debt. In actions of that order, a refusal to pay when due is not sustained without more by the presence of an adverse claim. The defendant, if unable to interplead, must respond to the challenge and defend as best it can (*Coler* v. *Corn Exchange Bank*, 250 N. Y. 136, 145; *Newhall* v. *Longacre Bank*, 248 N. Y. 252, 254; *Scheffer* v. *Erie County Sav. Bank*, 229 N. Y. 50, 53).

The sole issue before this Court is whether the petitioner's complaint states a cause of action against respondents. There is not involved in this

proceeding, at this time, any question as to the rights as between petitioner and possible adverse claimants. Those issues, if any, may be determined by the trial court after the action has been allowed to proceed, and the respondents have been required to answer. A determination of this motion to dismiss, in favor of the petitioner, will in no way foreclose adverse claimants from becoming parties to the action for the purpose of asserting their rights.

## I

### THE RIGHT TO RECEIVE THE AMOUNT OF THE BANK DEPOSIT WAS GOVERNED BY RUSSIAN LAW AND WAS VALIDLY ACQUIRED BY PETITIONER'S ASSIGNOR

A. When the deposit was made with the Belmont firm there was created between the Metal Company and the Belmont firm a debtor-creditor relationship. *Vladikavkazsky Railway Co.* v. *New York Trust Co.*, 263 N. Y. 369, 375. As a result of this relationship, there was imposed an obligation upon the Belmont firm to repay to the Metal Company the amount of the deposit upon its demand. Correlative to this obligation there was a right in the Metal Company to receive back the equivalent of the sums which were deposited. Both the obligation to pay and the right to receive are of a personal nature; the former follows the debtor, while the latter follows the creditor. Applying that principle here, New York law may determine the existence of an obligation to pay someone; but Russian law must determine to whom payment should be made.

The distinction between the obligation to pay and the right to receive was clearly pointed out in *Chicago, Rock Island & P. Railway* v. *Sturm*, 174 U. S. 710, 714, where this Court said:

> The right of a creditor and the obligation of a debtor are correlative but different things, and the law in adapting its remedies

for or against either must regard that difference.

The cases involving garnishment illustrate this distinction, for in those cases it is pointed out that garnishment is concerned only with the "obligation to pay", which obligation follows the debtor. See, for example, *Harris* v. *Balk*, 198 U. S. 215, 222, 223.

The distinction has been carefully analyzed by Minor in his treatise on *Conflict of Laws*. He says (pp. 275–276):

> Before laying down any rules for the determination of the *situs* of debts, it will repay us to notice briefly the dual meaning of the term "debt." The phrases "chose in action" and "debt" are often used as synonymous. But they are rather correlative than synonymous. They represent the same thing, but viewed from opposite sides. The "chose in action" is the right of the creditor to be paid, while the "debt" is the obligation of the debtor to pay. * * *
>
> The *chose in action*, or right of the creditor, is a personal right which adheres to him wherever his situs may be. It may for some purposes be his *legal* situs (or domicil), for others his *actual* situs. Just as, in the case of tangible chattels, though the *title* thereto follows the owner, and its transfer will be regulated by the law of the owner's situs, yet his or his transferee's ability to enforce that title may be in the exceptional cases determinable by a different system of law should the chattels be actually situated elsewhere;

> so also in the case of debts, though the *right* to enforce them follows the owner (the creditor), and his transfer is therefore to be governed by the law of his situs, actual or legal, yet his or his transferee's *ability* to enforce that right may depend upon another jurisdiction and system of law, if he has to resort to another State to sue the debtor. In other words, though the situs of the creditor's right follows the creditor, the situs of the debtor's obligation follows the debtor, in the sense that the debtor's legal obligation exists only in the State where it can be enforced against him. * * *
>
> It will be seen therefore that, while the situs of the creditor's right (chose in action) follows the creditor and corresponds to the *legal* situs of tangible chattels, the situs of the debtor's obligation follows the actual situs of the debtor, or of his property (in case of a proceeding *in rem* to enforce it), and corresponds to the *actual* situs of tangible chattels.

Applying the above to the facts of this case, it is clear that the *situs* of the right to receive the amount of the deposit was in Russia, where the Metal Company was created and conducted its business.

The right to receive the amount of a deposit is an intangible property right. It is governed by the general legal principle that an intangible property right is subject to the control of the law of the territory within which such right exists.

*Security Savings Bank* v. *California*, 263 U. S. 282, 285.

In the instant case this intangible property right was in Russia. Consequently, when by the decree of June 28, 1918, the right of the Metal Company was divested and was transferred to the Soviet Government, the latter acquired a valid right under its own law, which right will be recognized by our courts.

B. The transfer of the right to receive the amount of the deposit from the Metal Company to the Soviet Government was in effect an assignment of a chose in action. In *United States* v. *Bank of New York and Trust Company*, 77 F. (2d) 866, affirmed, 296 U. S. 463, the Circuit Court of Appeals for the Second Circuit, speaking of intangible personal property (cash and securities formerly belonging to a dissolved Russian corporation and nmationalized by Russian decrees) stated p. 868):

> There can be no serious dispute that its property and all its corporate rights in Russia were subject to such disposition as actually took place in accordance with Russian law. The Russian State obviously could, and this record shows that it did, confiscate everything belonging to this corporation within the confines of Russia. It could, and did, acquire for itself every right the corporation in Russia possessed. It became the corporation there so far as we are now concerned. It had all its property and

> rights as fully as though the corporation had *lawfully assigned them to it* before dissolution. To that extent our public policy as to confiscatory decrees, so far as it may be expressed by our courts, is of no moment. [Italics supplied.]

Here the domicile of the assignor, the Metal Company, and of the assignee, the Soviet Government, and the place of assignment are the same. Consequently, the law of that place, rather than the law which governs the original obligation to pay the debt, governs the validity of the assignment. This is the general rule, as well as the New York rule, with respect to negotiable instruments. *United States* v. *Guaranty Trust Co.*, 293 U. S. 340, 346; *Weissman* v. *Banque de Bruxelles*, 254 N. Y. 488; *Embiricos* v. *Anglo-Austrian Bank* (1905), 1 K. B. 677 (Court of Appeal); Beale, *The Conflict of Laws*, Section 350.1; *Restatement of the Law of Conflict of Laws*, Sections 350–353.

The rule that the law of the domicile of the assignor or of the assignee or of the place of the assignment governs the assignment of a chose in action has been applied expressly to the assignment of a bank deposit. *Republica de Guatemala* v. *Nunez*, (1927) 1 K. B. 669 (Court of Appeal). In this case Cabrera, domiciled in and the President of the Republic of Guatemala, assigned in Guatemala, by a written instrument and without consideration, his bank deposit with a banking firm in London to his infant son Nunez domiciled in

Guatemala. The assignment was valid by the law of England but invalid by the law of Guatemala. Later Cabrera, still in Guatemala, acknowledged in writing that the same bank deposit belonged to the Republic of Guatemala. Both the Republic of Guatemala and Nunez claimed the deposit. The claim of Nunez was rejected on the ground that the law of Guatemala, which governed the assignment, rendered it invalid, and the claim of the Republic of Guatemala was defeated for lack of proof. The Court of Appeal, by Lord Justice Scrutton, stated at page 693:

> It seems to me, therefore, that the authorities cited by Mr. Dicey do not support the proposition that a transaction as to an English debt, void by the law of the country where it takes place and by the law of the domicil of the parties to it, will be treated as valid in the country where the debt is deemed to be situated. In my opinion, both the capacity of the parties to enter into such a transaction and *the validity and effect of such a transaction in form and results* must be determined by one or the other of those laws; and in this case they are the same. [Italics supplied.]

In that case, in applying the rule respecting the transfer of negotiable instruments to the assignment of a bank deposit not evidenced by a negotiable instrument, Lord Justice Scrutton rejected the distinction between a debt evidenced by such an instrument and a debt not so evidenced. He held

that the validity of assignments of debts of both types was governed by the law either of the place of assignment or of the domicile of the parties thereto. This law being the same in the situation before him, he did not decide which law would be applicable, had there been a choice between one law or the other. He stated, in referring to several negotiable instrument cases, at page 691:

> In each case the foreign transaction [i. e. assignment or transfer of a negotiable instrument] would not have legal effect in England, but in each case it was held that, being valid by the *lex loci actus*, the English law would give effect to it. I can not think that the suggested difference between the piece of paper and the chose in action represented by it is satisfactory.

The *Nunez* case was followed in a similar situation in *Matter of Anziani* (1930), 1 Ch. 407. The *Nunez* and *Anziani* cases were cited with approval by the Court of Appeals of New York in *Hutchison* v. *Ross*, 262 N. Y. 381, 391. The same doctrine was followed by the Appellate Division with respect to an assignment of an account receivable payable in New York in *Hanna* v. *Lichtenhein*, 169 N. Y. Supp. 589, 591 (reversed on other grounds, 225 N. Y. 579), where it was said:

> The assignments were made in New Jersey, which was also the state of the domicile of the creditor. Therefore the law of New Jersey, it being the place of the contract and the situs of the thing, would govern.

We submit that these cases are authority for the proposition that the validity of the right acquired by the Soviet Government from the Metal Company is governed by Russian law.

C. The preceding discussion has shown that the Soviet Government acquired under Russian law a right to receive the amount of the deposit in question. This right was located in Russia, as distinguished from the obligation to pay which was located in New York. The court below proceeded on a different theory, namely, that a bank deposit has a *situs* which is always and for all purposes at the place where it is payable. We submit that that theory is erroneous. The *situs* of an intangible is not necessarily localized at one place for all purposes. As the Court of Appeals of New York stated in *Severnoe Securities Corp. v. London and Lancashire Insurance Co.*, 255 N. Y. 120, 123:

> The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience requires that a legal situs be ascribed to them. The locality selected is

> for some purposes, the domicile of the creditor; for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or was meant to be discharged; for others, any place where the debtor can be found [citing cases] * * *. What we are to determine in the case at hand is the locality to be chosen for the exercise by conservators of powers born of an emergency. For that purpose, if not for others, the situs of the chose in action, the subject of this claim, is in England and perhaps in Russia, but certainly not here.

We submit that, if the concept of *situs* is to be applied to a bank deposit, then for the purpose of determining succession or transfer of ownership that *situs* is at the domicile of the creditor.

The same conclusion follows from an application of the well-established doctrine of *mobilia sequuntur personam,* of which this Court said in *Blodgett* v. *Silberman,* 277 U. S. 1, 9:

> At common law the maxim "*mobilia sequuntur personam*" applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicil or else-

> where, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.

Referring to taxation, in *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204, 211, this Court stated:

> While debts have no actual territorial situs we have ruled that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the creditor's domicile for taxation purposes.

The doctrine is applied in connection with devolution of title, upon intestacy. *Ennis* v. *Smith,* 14 How. 399. In *Sultan of Turkey* v. *Tiryakian,* 162 A. D. 613, affirmed, 213 N. Y. 429, the Appellate Division stated (p. 615):

> It is a well-settled general rule of international law that the succession to personal property depends upon the law of the domicile of the decedent.

A case closely in point is *In re Lyons' Estate,* 175 Wash. 115, 26 P. (2d) 615. Upon the death without heirs of a bank depositor domiciled in Alaska, the State of Washington claimed the amount of his bank deposit within the State under a statute providing for escheat of property within the State of any person dying intestate without heirs. It was held that the amount of the bank deposit should go

to the administrator in Alaska and not to the State of Washington. The court said (26 P. (2d) at 618):

> The debt owing by the Seattle bank was a credit belonging to the decedent Lyons before and at the time of his death; and, applying the rule *mobilia sequuntur personam*, the situs of this property was at the domicile of its owner, and therefore it was not property within this state at the time of his death and not subject to escheat under our statute.

This Court has pointed out that the dissolution of a corporation "can not be distinguished from the death of a natural person in its effect." *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 259.

As was stated by the New York Court of Appeals, in *Russian Reinsurance Co.* v. *Stoddard*, 240 N. Y. 149, 167, in passing upon the right of a Russian insurance corporation to recover its surplus assets in New York:

> We have pointed out that the existence of the corporate plaintiff, its right to sue, the authority of the directors *and the devolution of title to its assets must all be determined by Russian law.* [Italics supplied.]

Applying the doctrine of *mobilia sequuntur personam*, it follows that this deposit must be deemed to have a *situs* at the domicile of the former owner, the Metal Company, for the purposes of determining succession or transfer of ownership, and that being under the legal control of the Soviet Gov-

ernment it was validly transferred to that government.

D. Heretofore we have shown that petitioner's claim is valid under general principles governing the legal relations arising out of a bank deposit. Petitioner's claim is also supported by the principles governing the relations between a corporation and the sovereign which created it.

The complete dominion of a State over corporations created by it is unquestioned. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 587; *Head* v. *Providence Insurance Company*, 2 Cranch 127, 168. The creation and extinguishment of a corporation are governed by the law of the State of incorporation. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 259; *Canada Southern Railway* v. *Gebhard*, 109 U. S. 527, 538; *Pendleton* v. *Russell*, 144 U. S. 640.

In *Canada Southern Ry.* v. *Gebhard, supra* (p. 537), the Court stated as follows:

> A corporation "must dwell in the place of its creation, and cannot migrate to another sovereignty" (*Bank of Augusta* v. *Earle*, 13 Pet. 588), though it may do business in all places where its charter allows and the local laws do not forbid. *Railroad* v. *Koontz*, 104 U. S. 12. But wherever it goes for business it carries its charter, as that is the law of its existence (*Relf* v. *Rundel*, 103 U. S. 226), and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it re-

tains abroad, and whatever legislative control it is subject to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia,* 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him. He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled

> by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony.

The English courts have applied this settled doctrine to Soviet decrees dissolving Russian corporations and have held that under these decrees such corporations must be considered as extinct. *Lazard Bros. & Co.* v. *Midland Bank* (1933), A. C. 289, 304–305; *In re Russo Asiatic Bank* (1934), Ch. 720; *Russian & English Bank* v. *Baring Bros. Co., Ltd.* (1934), Ch. 276.

In *United States* v. *Bank of New York & Trust Co.*, 77 F. (2d) 866 (affirmed 296 U. S. 463), the Circuit Court of Appeals for the Second Circuit stated at page 868:

> * * * No one will question the power of the government of the domicile of a corporation to destroy what it has created. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 587; *Head* v. *Providence Ins. Co.*, 2 Cranch 127, 168. When the now recognized Soviet Government issued its decrees to that effect this corporation was dead. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, *The Greyhound*, 68 F. (2d) 832 (C. C. A. 2). There can be no serious dispute that its property and all its corporate rights in Russia were subject to such disposition as actually took place in accordance with Russian law. The Russian State obviously could, and this record shows that it did, confiscate everything belonging to this corporation within the con-

> fines of Russia. It could, and did, acquire for itself every right the corporation in Russia possessed. It became the corporation there so far as we are now concerned. It had all its property and rights as fully as though the corporation had lawfully assigned them to it before dissolution. To that extent our public policy as to confiscatory decrees, so far as it may be expressed by our courts, is of no moment. When the executive branch recognized the Soviet Government, the judicial branch became bound to recognize the validity of Soviet decrees in Soviet territory from the beginning of the Soviet regime. *Oetjen* v. *Central Leather Co., supra.* See also, *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* (1933), A. C. 289, H. of L., for the rule in England. Consequently we must for present purposes take the Soviet Government to have become to all intents and purposes the Russian insurance corporation in Russia which owned the deposit in New York subject to the fulfillment of the conditions upon which the deposit was made with the New York Superintendent of Insurance.

We submit that these authorities make it clear that the Soviet Government had power to dissolve the Metal Company and to constitute itself as the successor of the Metal Company.

The succession of the Soviet Government was effected by vesting in a particular organ of the Soviet Government the administration of the en-

terprises nationalized by the decree of June 28, 1918 (R. 21), including the Metal Company.

It is well settled law that on the dissolution of a corporation the successor designated by the State of its incorporation obtains title to the corporation's assets, wherever situated. *Relfe* v. *Rundle,* 103 U. S. 222; *Martyne* v. *American Fire Insurance Co.,* 216 N. Y. 183; *Cogliano* v. *Ferguson,* 245 Mass. 364, 139 N. E. 527; *Bockover* v. *Life Association of America,* 77 Va. 85. In the *Restatement of the Law of Conflict of Laws,* this principle is stated as follows (Section 161):

> If a statute of the state of incorporation which is in force at the time of the dissolution of a corporation provides that all its assets shall, upon dissolution, pass to a person designated in the statute, the right of such person to the personal property, wherever situated and whether tangible or intangible, will be recognized and given effect by other states, and the designated person can bring suit in any state upon claims due to the corporation.

We submit that under the principles discussed above the Soviet Government became the successor to the dissolved Metal Company and thereby acquired the right to this bank deposit. It assigned its right to the United States. The question then becomes whether the enforcement of this right may be denied on any principle of public policy.

## II

### THERE IS NO PUBLIC POLICY WHICH PREVENTS THE ENFORCEMENT OF PETITIONER'S CLAIM

### A. *The Public Policy of the United States*

This Court has held that it will give effect to the laws and decrees of foreign governments with respect to property situated in their territories irrespective of whether such decrees are confiscatory. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Ricaud* v. *American Metal Co.*, 246 U. S. 304. Under these cases it seems clear that this Court will recognize a title to property or rights situated in Russia and nationalized by the Russian *Government.*[2]

The English courts have adopted a rule which, we submit, is the proper rule to be applied herein. In *Luther* v. *Sagor* (1921), 3 K. B. 532, 558–559, it was stated by the Court of Appeal:

> But it appears a serious breach of international comity, if a state is recognized as a

[2] It is immaterial that the United States did not recognize the Russian Government at the date of the passage of the nationalization decrees. Subsequent recognition relates back to the inception of the recognized government and all acts done by it must be considered as having been done by a recognized government. *Underhill* v. *Hernandez*, 168 U. S. 250, 252. In *Oetjen* v. *Central Leather Co.*, *supra*, at 303, this Court stated that—"recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence."

> sovereign independent state, to postulate that its legislation is "contrary to essential principles of justice and morality." Such an allegation might well with a susceptible foreign government become a casus belli; and should in my view be the action of the Sovereign through his ministers, and not of the judges in reference to a state which their Sovereign has recognized.

Again, at p. 559:

> I do not feel able to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judges ought not to recognize it. The responsibility for recognition or nonrecognition with the consequences of each rests on the political advisers of the Sovereign and not on the judges.

The decisions of this Court, above cited, are in accord with the English principle. In no case has this Court declared any rule of public policy which would prevent the enforcement of petitioner's right herein.

The right claimed by the United States was acquired by virtue of an assignment forming part of an international agreement. That assignment stated that it was made "preparatory to a final settlement of the claims and counterclaims" between the two governments and the claims of their nationals (R. 25). The assignment was procured for the benefit of the United States Gov-

ernment and United States citizens. It can not be gainsaid that the public policy of the United States favors the protection of the rights, pecuniary or otherwise, of its own citizens. It must follow therefore, that the public policy of the United States accords with the enforcement of the right acquired under this assignment.

By the act of recognition of the Soviet Government and the acceptance of the Litvinoff assignment, the Executive has declared in favor of the enforceability of the right herein asserted. This declaration, we submit, the Executive is fully entitled to make when exercising his legitimate functions of recognizing a foreign government and arranging with it for the settlement of outstanding international claims. As this Court has recently said, with reference to international affairs:

> In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation.

and that in the President is vested—

> the very delicate, plenary, and exclusive power * * * as the sole organ of the federal government in the field of international relations.
>
> *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided Dec. 21, 1936.

Cf. *Doe* v. *Braden*, 16 How. 635, 636; *Terlinden* v. *Ames*, 184 U. S. 270, 290.

This case does not present the question as to whether the Executive may override a pre-existing national public policy. We have shown that there is no national policy opposed to the enforcement of this right. On the other hand, there are compelling reasons in favor of its enforcement, since enforcement is sought for the purpose of bringing about a settlement of the claims of our citizens against a foreign government.

The court below intimated that the Fifth Amendment constituted a barrier to the enforcement of this claim of the United States (R. 25). In our view, it has no application here. The Fifth Amendment applies, in terms, only where there is a taking by the United States. Here there is no taking from the Belmont firm, which is under an obligation to repay the amount of the deposit. The bank certainly can not set up the claim of a violation of the Fifth Amendment where its property is not involved. *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576; *Erie R. R. Co.* v. *Williams,* 233 U. S. 685, 697. Nor can the Metal Company complain, for the taking from it was by its own sovereign, the Soviet Government.

The court below cited *Russian Volunteer Fleet* v. *United States,* 282 U. S. 481, as authority for the proposition that the Fifth Amendment was here applicable. We do not perceive the relevance of that case. The issue there was as to the jurisdic-

tion of the Court of Claims to entertain an action to recover compensation for the requisitioning by the United States under the Emergency Shipping Act of June 15, 1917, of certain contracts for the building of vessels. It was urged that since American citizens might not sue for similar compensation in the courts of the Soviet Union on account of non-recognition of the Soviet Union by the United States, Section 155 of the Judicial Code prevented any action by the Russian Volunteer Fleet in the Court of Claims. This Court held that the authority to sue in the Court of Claims for such compensation conferred by the Emergency Shipping Act of June 15, 1917, being express authority, rendered Section 155 of the Judicial Code inapplicable to this particular action and that hence an action might be brought by the Russian Volunteer Fleet in the Court of Claims. The discussion of the Fifth Amendment contained in the opinion was directed to pointing out that the Volunteer Fleet was entitled to receive compensation for property taken by the United States and that the pertinent statutes were not to be so construed as to impute to Congress an intention to deny or to postpone indefinitely the payment of compensation for the taking.

Since here there is no taking by the United States, either from the bank or from the Metal Company, the discussion in the Volunteer Fleet opinion has no applicability. As the Court pointed

out in that case the question there presented was "not one of a claim advanced by or on behalf of a foreign government or regime, but is simply one of compensating an owner of property taken by the United States" (282 U. S. at 492).

*B. The Public Policy of New York*

There is no rule of public policy in New York which denies enforcement to a right acquired in Russia, under the Russian nationalization decrees. On the contrary, the New York courts have expressly held that the Russian nationalization decrees transferring the ownership of tangible property situated in Russia will be given effect, even though the decrees operated by way of confiscation. *Salimoff* v. *Standard Oil Co.*, 262 N. Y. 220. They have made the same ruling in the case of intangible property located in Russia. *Dougherty* v. *Equitable Life Assurance Soc.*, 266 N. Y. 71. In that case it was pointed out that there is no distinction between tangible and intangible property as concerns giving effect to a decree confiscating property or extinguishing a right. The New York court there said (p. 87):

> The plaintiffs seek to make a distinction between the seizure of tangible property (*Salimoff* and *Sagor* cases) and the disposition and canceling of rights to intangible property. We can see no distinction in this instance.

The scheme of nationalization of property of Russian corporations enacted in the basic decree of June 28, 1918, was an essential feature in the establishment of the Soviet Government, upon the theory of national or public rather than private ownership of the nation's resources. In other words, these decrees of nationalization were part of the Soviet plan of national economy. The fact that these decrees indicate a policy different from our own does not mean that they violate our domestic public policy. This was clearly pointed out by the Court of Appeals of New York in *Dougherty* v. *Equitable Life Assurance Society*, *supra*, wherein it stated as follows (p. 83):

> In Russia, where all these insured were, with one or two exceptions, these decrees were laws to be obeyed. They were the laws of their government. As to them the Soviet Republic was no body of bandits, confiscating property, but an existing government, carrying out new theories of insurance. If the Russian people, under their Soviet form of government, determined to abolish all private insurance for their citizens and establish a system of social protection by the State, that was their affair, not ours; and however objectionable we may consider the monopolization of all business, including insurance and banking, and the conduct of it thereafter by the government, we at least must admit that other peoples can try the experiment if they desire.

It follows that the principle of the cases cited above is herein applicable, and that the right which the Russian Government validly acquired in Russia, pursuant to Russian law and thereafter assigned to the United States, will be enforced in our courts.

The court below stated that the New York courts "have expressly refused to recognize the Russian government's title to such a debt based on the confiscatory decree in question" (R. 24), citing *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369. We submit that the case cited does not support that statement. That was a suit by a Russian corporation to recover a deposit with a New York bank. The answer of the bank set up two defenses: (1) that a former Russian government had an interest in the fund because certain deposits had been made by this Government to the credit of the Railway Company; and (2) that the corporation had been nationalized and that consequently its directors no longer held office and therefore had no authority to make the claim. The court struck out the first defense on the ground that "the mere assertion by a defendant bank that a deposit was made in an account of a plaintiff by a third party does not justify a bank in refusing to pay over to the party in whose name the fund is deposited" (p. 374). This first defense did not involve any question with respect to the nationalization decrees.

With reference to the second defense the court stated that the question was "shall the law compel a debtor in this State to pay its debt or permit it to hold the property of its creditor indefinitely?" (p. 378). The court held that while the corporation had ceased to exist in Russia, the nationalization decrees would not be given effect to deprive the corporation of legal existence in New York, and hence the surviving directors could sue. There was no refusal to recognize the Soviet Government's title based on nationalization decrees, for no such question was presented. Indeed the court pointed out that "Nowhere in the answer does the defendant plead the Russian law or make any claim under the law of Russia but expressly bases its defenses upon the law of this state" (pp. 376–377).

In the course of its opinion the New York court stated (pp. 378–379):

> It is hardly necessary to state that the arbitrary dissolution of a corporation, the confiscation of its assets and the repudiation of its obligations by decrees, is contrary to our public policy and shocking to our sense of justice and equity. That the confiscation decree in question, clearly contrary to our public policy, was enacted by a government recognized by us, affords no controlling reason why it should be enforced in our courts.

This language has been relied upon as laying down a general rule that New York public policy forbids

giving effect to foreign confiscatory decrees. So construed, it would mean that the *Vladikavkazsky* case is contrary both to the *Salimoff* case which preceded it and to the *Dougherty* case which was decided subsequently, in both of which cases the same court upheld defenses arising out of such decrees. The three cases can be harmonized only by confining the language of the *Vladikavkazsky* case to the precise issue there presented.

In Section A of Point I, *supra,* we have shown that the obligation of the Belmont firm to pay may be governed by New York law, but that the right to receive the amount of the deposit was governed by Russian law. The *Vladikavkazsky* case holds that the bank is under an obligation to pay. But whether payment is to be made to the nationalized corporation or to the Soviet Government is a question governed by Russian law. True, the *Vladikavkazsky* case held that payments should be made to the corporation. But there was no issue there as to whether payment should be made to someone else. The New York Court of Appeals did not there state, and has not said that as between the Soviet Government and the corporation the latter must prevail. We submit that had that issue been presented the court would have been required, under the *Salimoff* and *Oetjen* cases, to recognize that the right to receive had been validly acquired by the Soviet Government and to enforce that right.

### C. *Section 977-b of the New York Civil Practice Act*

On June 8, 1936, subsequent to the commencement of this suit, the New York Legislature enacted Section 977-b of the New York Civil Practice Act, Laws of 1936, c. 917 (printed in the Appendix, *infra*, pp. 56–65).

Briefly this statute provides that any creditor or stockholder of a foreign corporation having assets in New York and which has been dissolved, liquidated, or nationalized, or the charter of which has been suspended or revoked, or which has ceased doing business may apply for the appointment of a receiver.[*] Title to all assets of the corporation within New York vests in the receiver immediately upon appointment. The existence of the corporation and all causes of action by or against it are not to be deemed ended or affected by the nationalization or dissolution of the corporation. A receiver may be substituted for the corporation in any action in the state or Federal courts and may revive any action which shall have abated. A re-

[*] On June 25, 1936, a receiver was appointed for the Metal Company under this statute at the instance of a stockholder. We understand that this receiver has served a demand on the executors of August Belmont for the payment to him of the deposit in question, but that the executors have not complied with this demand. None of these facts, however, appear in this record.

ceiver appointed in accordance with the statute is to proceed to reduce all assets to possession. Creditors and stockholders may file claims with the receiver. Upon settlement of the receiver's account the court must direct payment to creditors and stockholders in accordance with a designated priority. The time between dissolution of the corporation and the appointment of a receiver, plus three years after such appointment, is not to be counted in determining whether any action by or against the corporation or receiver has been barred by any statute of limitations.

The court below cited this statute in connection with its statement that "it is contrary to the public policy of the state of New York to enforce confiscatory decrees with respect to property located here at the date of the decree" (R. 24). We have already shown that the right to receive the amount of the deposit was not "located here", but was situated in Russia.

Presumably the court had in mind the concluding sentence of Sec. 19 of the statute which reads:

> Any receiver appointed pursuant to the provisions of this section may be substituted for such corporation in any action or proceeding pending in the courts of the state or of the United States to which such corporation is a party and may revive any action which shall have heretofore or which may hereafter have abated, and such liquidation, dissolution, nationalization, expira-

> tion of its existence, or repeal, suspension, revocation, or annulment of its charter or organic law in the country of its domicile shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands, or choses in action of such corporation within the state or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state.

The sentence quoted above is so phrased as to make it clear that the provision against according effectiveness or validity to nationalization decrees comes into operation only in those cases in which a receiver brings suit or has been substituted for the corporation in a pending action. Consequently this particular provision is not applicable to an action such as the one at bar where neither the receiver nor the corporation is a party.

Furthermore, it is our contention that this statute, even if intended to be applicable herein, cannot operate to defeat the enforcement of petitioner's right.

If this statute, apart from its procedural provisions, is to be considered as merely a reiteration of the rule of public policy laid down in the decisions of the New York Court of Appeals, then, as we have shown above, that rule does not prevent the enforcement of petitioner's right. See Section B of this point, *supra,* pp. 37–41.

If this statute is to be considered as extending the rule laid down in the decisions, then it would have the effect of divesting the United States of a right which had been acquired prior to the enactment of the statute. At all times prior to the enactment of the statute the Belmont firm was under a contractual obligation to repay the amount of the deposit on the demand of the Metal Company or of its transferee. The right to receive payment was a property right protected by the impairment of contracts clause of the Constitution (Art. I, cl. 10) and by the due process clause of the Fourteenth Amendment to the Constitution. *Coombes* v. *Getz*, 285 U. S. 434. There suit was brought by creditors of a corporation against a debtor to enforce a contract debt. The cause of action was based upon a provision of the State Constitution in force when the action was instituted. While an appeal was pending from a dismissal of the complaint this Constitutional provision was repealed. It was urged that this repeal destroyed the cause of action unless it had previously been reduced to final judgment. This Court held that the cause of action was contractual and not statutory, and hence that it was a property right protected by the Constitution. It stated at p. 442:

> The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was

> not *purely* statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the previously vested right of the creditor (which in every sense was a property right, *Ettor* v. *Tacoma*, 228 U. S. 148, 156; *Pritchard* v. *Norton*, 106 U. S. 124, 132) to enforce his cause of action upon the contract.

See also *Coolidge* v. *Long*, 282 U. S. 582, and *Pritchard* v. *Norton*, 106 U. S. 124.

According to this fundamental principle the right to receive the deposit cannot be defeated. If, as we contend, the United States acquired a valid right through the Litvinov assignment, that right was acquired on November 16, 1933, prior to the enactment of this statute, and could not thereafter be divested.

The court below also construed the statute as providing that "the title of the confiscating government is not to be recognized at least until after the expiration of the period within which creditors or stockholders may claim it" (R. 25). We find no provision of the statute justifying such a construction. If, however, the statute may properly be construed as postponing enforcement of peti-

tioner's claim for a certain period, it does not follow that the complaint should have been dismissed. This record presents only the question as to whether the complaint sets forth a valid cause of action. If this Court should reverse the judgment of the court below, the action would take its normal course in the District Court. There respondents could set up the New York statute in their answer, and, if the validity of the statute were upheld and the statute deemed applicable to this case, the enforcement of the claim of the United States might then be postponed for the period designated by the statute. Consequently, a construction of the statute as a stay does not affect the question presented by this record, namely, whether the complaint states a valid cause of action.

In *Cummings* v. *Deutsche Bank,* No. 254, decided by this Court February 1, 1937, a Congressional Resolution directed that deliveries of property under the War Claims Act should be postponed so long as Germany remained in arrears with respect to certain obligations. It was held that this Resolution did not deprive the courts of jurisdiction to entertain a suit by an alien against the Alien Property Custodian and the Court went on to determine the rights of the parties. The Court said:

> The measure was adopted because of Germany's default which, as indicated by the

> context, was assumed not to be permanent. It was intended only temporarily to postpone final disposition of the seized property, merely to stay deliveries whether directed by administrative order or judgment of a court. Claimants may have deliveries whenever Germany ceases to be in arrears. Fulfillment of her promises will end the restraint imposed by the resolution. * * * Clearly the trial court had jurisdiction to entertain the complaint.

*D. The application of New York public policy in Federal courts, and to matters of national concern*

Even if it be conceded for the purposes of argument that the public policy of New York is opposed to the enforcement of this right, it is submitted that the public policy of an individual State can not prevent its enforcement in the Federal courts.

It is well settled that a validly acquired right can not be denied enforcement in the Federal courts even where sitting in a State which prohibits the enforcement of the right in its own courts. Even where a State denies enforcement in its own courts to a contract made within its own borders, the Federal courts will still enforce the contract, provided that state law does not make the contract void. *David Lupton's Sons Co.* v. *Automobile Club of America,* 225 U. S. 489. Similarly, a right validly aequired under a foreign sovereignty will be en-

forced in a Federal court even though not enforceable in the state court. *Suydam* v. *Broadnax*, 14 Pet. 67; *Union Bank* v. *Jolly's Admrs.*, 18 How. 503, 507. It is immaterial that the state court's refusal to enforce the right is grounded on local public policy. *Boyce* v. *Tabb*, 18 Wall. 546; *Dexter* v. *Edmands*, 89 Fed. 467 (C. C. Mass.).[4]

There are special reasons why the Federal court should not follow a local public policy in a case such as this, involving the international relations of the United States. It must be remembered that the Litvinov assignment constitutes an essential part of the negotiations looking toward the settlement of the claims of the United States and its nationals against the Soviet Government and its nationals. The settlement of international claims is a matter clearly within the exclusive competence of the Federal Government. This Court has recently stated that where matters of foreign relations are concerned the States have not and never have had any

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[4] Even where a rule of local public policy makes a contract void, this Court has held that the Federal courts are not bound to follow that rule where the question is one of general law. In *B. & W. Taxicab Co.* v. *B. & Y. Taxicab Co.*, 276 U. S. 518, this Court in holding that a rule of local public policy which made a contract void would not be followed in the Federal courts, where a question of general law was involved, said (p. 528): "Care is to be observed lest the doctrine that a contract is void as against public policy be unreasonably extended."

power. *United States* v. *Curtiss-Wright Export Corporation,* No. 98, decided December 21, 1936.

Prior to the recognition of the Soviet Government and the assignment to the United States of claims arising out of the nationalization decrees, the individual States were free to apply their own policy as to whether rights acquired by these decrees should be enforced. However, after the recognition and the Litvinov assignment, the effectiveness of these decrees, with respect to property covered by the assignment, became a matter of national and international concern. Only the public policy of the United States, and not that of any individual State, would become operative herein. The proper exercise by the Executive of his constitutional power in the field of international relations would be seriously impaired if each of the forty-eight States were permitted to impose its own local policy with respect to matters which have been made the subject of an international agreement.

The assignment bears evidence on its face that the question of the enforcement of the right which the Soviet Government assigned to the United States is closely connected with the settlement of outstanding international claims. The statement of this Court in *Ingenohl* v. *Olsen & Co.,* 273 U. S. 541, 544, is pertinent here:

> It is not necessary to consider whether the section of the Code of Civil Procedure re-

> lied upon was within the power of the Philippine Commission to pass. In any event as interpreted it involved delicate considerations of international relations and therefore we should not hold ourselves bound to that deference that we show to the judgment of the local Court upon matters of only local concern.

In *Doe* v. *Braden,* 16 How. 635, Chief Justice Taney stated, at page 656:

> * * * it would be impossible for the executive department of the government to conduct our foreign relations with any advantage to the country, and fulfill the duties which the Constitution has imposed upon it, if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power, by its constitution and laws, to make the engagements into which he entered.

To subject the enforcement of the right acquired by the United States under the agreement to the varying and uncertain policies of each of the States would doubtless defeat any attempt to arrive at a solution of these international questions.

## CONCLUSION

For all of the reasons set forth above, it is respectfully submitted that the judgment of the court below should be reversed.

STANLEY REED,
*Solicitor General.*
W. W. SCOTT,
*Acting Assistant Attorney General.*
DAVID E. HUDSON,
A. H. FELLER,
ALBERT LEVITT,
*Special Assistants to the Attorney General.*
HENRY MUNROE,
*Special Attorney.*
PAUL A. SWEENEY,
*Attorney.*

FEBRUARY 1937

# APPENDIX

## I

### AGREEMENT CONCLUDED NOVEMBER 16, 1933, BETWEEN THE PRESIDENT OF THE UNITED STATES AND THE PEOPLE'S COMMISSAR FOR FOREIGN AFFAIRS OF THE UNION OF SOVIET SOCIALIST REPUBLICS

WASHINGTON, *November 16, 1933.*

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by

the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interest therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,

*People's Commissar for Foreign Affairs,*
*Union of Soviet Socialist Republics.*

MR. FRANKLIN D. ROOSEVELT,

*President of the United States of America,*
*The White House.*

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THE WHITE HOUSE,
*Washington, November 16, 1933.*

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet

Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

"(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. MAXIM M. LITVINOV,

*People's Commissar for Foreign Affairs,*

*Union of Soviet Socialist Republics.*

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## II

### SECTION 977–B OF THE CIVIL PRACTICE ACT OF NEW YORK

### CHAPTER 917

AN ACT to amend the civil practice act, in relation to providing a method for the payment of claims against certain corporations

[Became a law June 8, 1936, with the approval of the Governor. Passed, three-fifths being present]

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The civil practice act is hereby amended by inserting therein a new section, to be section nine hundred and seventy-seven-b, to read as follows:

§ 977–b. *Receivers to liquidate local assets of foreign corporations.*—1. An action may be insti-

tuted in the supreme court for the appointment of a receiver of the assets in this state of a foreign corporation, whenever such foreign corporation has assets or property of any kind whatsoever, tangible or intangible, within the state of New York, and (a) it has heretofore been or is hereafter dissolved, liquidated or nationalized or (b) its charter or organic law has heretofore been or hereafter is suspended, repealed, revoked or annulled, or (c) it has heretofore ceased or hereafter ceases to do business, whether voluntarily or otherwise or by reason of the expiration of the term of its existence or by revocation or annulment of its organic law or by dissolution or otherwise.

2. Such action may be commenced by any domestic or foreign creditor, judgment creditor or attachment creditor or stockholder of such corporation, or by any plaintiff on whose behalf a warrant of attachment against the property of such corporation has heretofore been or may hereafter be issued.

3. Service of the summons in such action may be made personally within the state of New York, by delivery of the same to any officer or director of the corporation, or by publication pursuant to an order obtained as hereinafter provided.

4. Upon an affidavit reciting that personal service of the summons cannot be effected within the state of New York with due diligence and reciting and upon a summons and verified complaint alleging that the defendant is a foreign corporation and has or may have or may be entitled to assets, credits, choses in action or other property, tangible or intangible within the state and that such corporation has been dissolved, nationalized, or that

its charter or organic law has been suspended, repealed, annulled or revoked, or that it has ceased to do business, plaintiff may apply, without notice, to the supreme court or any judge or justice thereof for the appointment of a temporary receiver pending the determination of the action and the court must thereupon appoint such receiver who shall, from time to time, file such undertakings as the court may direct and shall take, receive and reduce to his possession any and all assets, credits, choses in action and property, tangible and intangible, in the state of New York of the said foreign corporation and hold the same until the further order of the court.

5. An order directing service by publication of the summons shall be made upon application of a plaintiff in any action brought pursuant to this section and must be founded upon a verified complaint, containing the allegations set forth in subdivision four hereof, and upon an affidavit reciting that personal service of the summons cannot be effected within the state with due diligence and that a temporary receiver of its property within the state of New York has been appointed pursuant to this section in such action and that a copy of the order appointing the receiver has been served personally by or on behalf of such receiver upon a person, firm or corporation holding property, tangible or intangible, of the said foreign corporation, or against whom a claim or demand in favor of such foreign corporation exists and that demand therefor has been made upon such person, firm or corporation by or on behalf of such receiver.

6. The order directing service of the summons shall require the publication thereof in two news-

papers published in the state of New York in the English language at least once a week for six successive weeks, and shall also require the mailing on or before the date of the first publication of a copy of the summons, complaint and order to the corporation at its last known principal or head office in the state or country of its domicile.

7. In an action pursuant to this section the summons must be served personally or an order directing service thereof by publication must be obtained and the first publication thereof made within sixty days after the appointment of the temporary receiver, and if served by publication, the service must be made complete by the continuance thereof.

8. If served by publication, service of the summons shall be deemed complete ten days after the date of the last publication. The action shall be deemed commenced upon the issuance of the summons. The order appointing the receiver and the papers upon which the same is granted shall be filed in the office of the clerk of the court where the action is triable within ten days after the order is made.

9. In the event an answer is interposed on behalf of the defendant, any party to the action may at any time apply for and shall be entitled to an order setting the case down for trial on a day certain as a preferred cause.

10. In the event that the defendant defaults in answering, or if after a trial the court is satisfied that the defendant has ceased to do business by reason of any thing or matter whatsoever, or that it has been dissolved, liquidated or nationalized, or its charter or organic law has been suspended, repealed, revoked or annulled, the court must there-

upon direct judgment, making permanent the appointment of the temporary receiver appointed pursuant to subdivision four hereof and directing the receiver to liquidate the assets, credits, choses in action and property, tangible and intangible, in the state of New York of the said defendant, in the manner herein provided for.

11. Such judgment shall direct that the receiver shall, as speedily as possible, reduce to cash all the assets, credits, choses in action, and other property, tangible and intangible, of the said defendant which it may have or be entitled to or may be entitled to claim or to receive in the state of New York, and shall direct said receiver to give notice to all creditors and other persons interested in the said defendant, in such manner as the court may direct and requiring them to present to the receiver proof of their claims against or interests in the said defendant within a time limited in the said judgment, which time shall not be less than sixty days after the giving of such notice. Proofs of claim shall set forth the address of the claimant and the name and address of claimant's attorney, if any.

12. Any receiver appointed pursuant to this section shall have all the powers and duties, in addition to those herein provided for, as are possessed by and conferred upon receivers and trustees by the laws of the state of New York.

13. After the expiration of the time limited by the judgment for the filing of claims with the receiver, the receiver shall prepare and submit to the court a detailed account showing the assets received, the disposition thereof and the value of any claims or assets which have not theretofore been reduced to cash, with a full description of each,

and a statement showing the name and address of each and every claimant and the name and address of his attorney, if any, and the amount and the nature of the claim, and a statement of the allowance or disallowance thereof, and a statement of the costs and expense of the action and of the receivership.

14. Notice of the filing of such account shall thereupon be given to all persons or their attorneys who have appeared in the action or filed claims with the receiver, by mail to the address set forth in the proof of claim or notice of appearance together with notice that on a date specified therein not less than thirty days thereafter, an application will be made to the court for settlement of the receiver's account and for partial distribution in the event all the assets are not reduced to cash and for full distribution in the event the assets have theretofore been reduced to cash, together with notice of the amounts which have been paid or will be applied for as costs, expenses, commissions and allowances.

15. Upon the return date of such application, or at such other time fixed by the court, the parties and claimants may be heard and proof taken and the receiver's account settled by the court or by a referee appointed for that purpose by the court.

16. Upon settlement of the receiver's account, the court must direct payment in the following order and manner: a. The costs and expenses of the action and of the receivership and the commissions and allowances and attorneys' fees in connection therewith shall first be paid, and if the court is satisfied that the action has been of benefit

to the creditors of the said defendant it may allow the plaintiff his reasonable expenses including attorneys' fees in connection with such action.

b. The allowed claims, if any, of creditors with valid attachments issued out of any court in the state prior to the commencement of an action pursuant to this section, shall then be paid in the order of their priority. Attachments issued after the commencement of an action for the appointment of a receiver pursuant to this section shall be entitled to no priority by reason thereof.

c. The allowed claims which originally accrued or arose, wholly or partly, in favor of residents of the state of New York and the allowed claims based on causes of action which accrued or arose in the state of New York shall then be paid.

d. The allowed claims of all other creditors of the corporation shall then be paid.

Any surplus remaining after making all of the aforesaid payments in the order mentioned shall then be paid to the stockholders of the corporation who have proved claims as such pro rata in accordance with their stockholdings, or in the discretion of the court, to the receiver or liquidator, if any, appointed in the domicile of the corporation, provided such receiver or liquidator has proved his right thereto.

17. Thereafter and as often as practicable the receiver shall file further accounts and give notice thereof as provided in subdivision fourteen hereof, until the assets are entirely liquidated and distributed as hereinbefore provided.

18. The time between the cessation of business by the corporation or its dissolution or nationalization or the suspension, repeal, revocation or annul-

ment of its charter or organic law, and the appointment of a receiver in this state pursuant to this section, whichever time is longer, plus three years after such appointment, shall not be a part of the time limited by domestic or foreign law for the commencement of an action by or on behalf of or against said corporation or by or against said receiver, whether or not said action has heretofore been barred by any statute of limitations of this state or of any other state or country.

19. Title to all assets, credits, choses in action, and property, tangible and intangible, of any and every kind whatsoever, which such corporation owns, is entitled to or may be entitled to claim or receive within the state of New York shall immediately vest in the receiver upon the making of the order appointing him. The existence of such corporation and causes of action by or against such corporation existing at the time of its liquidation, dissolution, nationalization, expiration of its existence, repeal, suspension, revocation or annulment of its charter or organic law, or arising thereafter, shall not be deemed ended, abated or affected thereby, nor shall actions brought by or against such corporation or a receiver appointed hereunder be deemed to have ended or abated or to have been affected by reason of such liquidation, dissolution, nationalization, expiration of its existence or suspension, repeal, revocation or annulment of its charter or organic law. This provision shall apply to all property, tangible and intangible, debts, demands, and choses in action of such corporation within the state of New York, and to all litigation heretofore or hereafter brought in the courts of the state or of the United States by or against the

corporation or a receiver of said corporation appointed pursuant to the provisions of this section. Any receiver appointed pursuant to the provisions of this section may be substituted for such corporation in any action or proceeding pending in the courts of the state or of the United States to which such corporation is a party and may revive any action which shall have heretofore or which may hereafter have abated, and such liquidation, dissolution, nationalization, expiration of its existence, or repeal, suspension, revocation or annulment of its charter or organic law in the country of its domicile shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands or choses in action of such corporation within the state or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state.

20. Any receiver appointed pursuant to this section shall be deemed to have obtained possession of all assets, credits, choses in action and property, tangible and intangible, of the said foreign corporation, by causing to be delivered to and left with the person, firm or corporation holding the same or against whom the claim or demand exists, a copy of the order appointing said receiver together with a demand therefor.

21. If any receiver or trustee has heretofore been appointed in this state for such corporation or its property in any action or proceeding, either before or supplementary to judgment, otherwise than in an action brought pursuant to this section, such receiver or trustee may be appointed or con-

tinued as the receiver in any action brought pursuant to the provisions of this section.

22. The appointment of a receiver pursuant to this section or the pendency of an action for the appointment of such receiver, shall until such receiver shall be discharged or until such action shall have terminated, be a bar to any subsequent application or action for the appointment of a receiver of the assets of the same corporation.

23. An action must be commenced under this section within three years from the effective date of this act or within three years from the discovery by the plaintiff or his predecessor in interest, of any asset of said corporation in the state of New York, whichever date is the later.

24. The terms "property" and "assets" as used in this section shall be deemed to include, but shall not to be limited to, claims against persons, firms or corporations residing, sojourning, or doing business in the state.

25. If any of the provisions of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared separable.

§ 2. This act shall take effect immediately.

U. S. GOVERNMENT PRINTING OFFICE: 1937